

Part 8: Appeal Process

Sections 8.1 – 8.18

[Section 8.1: Appeal Request](#)

[Section 8.2: Group Appeals](#)

[Section 8.3: Time Limits for Requesting Appeals](#)

[Section 8.4: The Hearing Notice](#)

[Section 8.5: Request for Continuance from the Appellant](#)

[Section 8.6: Review of Action](#)

[Section 8.7: Disposal of Appeal without a Fair Hearing](#)

[Section 8.8: The Fair Hearing](#)

[Section 8.9: Preparation for Hearing by Appellant](#)

[Section 8.10: Preparation for Hearing by the Service Coordinator and/or Case Manager, BDDS Waiver Unit or BDDS Level of Care Unit](#)

[Section 8.11: Conduct of the Hearing](#)

[Section 8.12: Continuance of Hearing](#)

[Section 8.13: The Hearing Record](#)

[Section 8.14: The Fair Hearing Decision](#)

[Section 8.15: Actions of the Administrative Law Judge's Decision](#)

[Section 8.16: Agency Review](#)

[Section 8.17: Judicial Review](#)

[Section 8.18: Lawsuit](#)

Section 8.1: Appeal Request

An appeal is a request for a hearing before an Administrative Law Judge with the Family and Social Services Administration, Hearings and Appeals Section. The purpose of an appeal is to determine whether a decision made by a Service Coordinator, Case Manager, Waiver Specialist, or the DDRS Central Office affecting the recipient/consumer, is correct. An appeal request must be in writing and forwarded to the hearing authority.

State Form 46015 Form HCBS 5 is used to notify each Medicaid HCBS Waiver applicant/participant of any action that affects the applicant/participant's or prospective participant's Medicaid benefits related to HCBS waivers including determinations regarding level of care, HCBS waiver service actions including reduction, termination or denial of a service and authorized services and service providers.

An explanation regarding a waiver service applicant/participant or prospective participant's appeal rights and the opportunity for a fair hearing is found on the back of the Notice of Action (NOA). Part 2 "Your Right to Appeal and Have a Fair Hearing" advises applicant/participant or prospective participant of his/her right to appeal and the timeliness requirements association with the right to appeal. Part 3 "How to Request an Appeal" provides instructions regarding the procedures that are necessary in the appeal process, including the right of the appellant to authorize representation by an attorney, relative or other spokesperson on behalf of the appellant.

HCBS waiver participants are advised of the Right to Appeal and request a Fair Hearing by the Case Manager (CM) employed by the contracting case management entity. The CM provides each participant and eligible prospective participant (as well as his or her guardian or advocate, as appropriate) with a copy of the NOA.

For HCBS waiver participants, an NOA is generated and sent to a participant when the CM generates the Plan of Care/Cost Comparison Budget (CCB) and the CCB is authorized by the Bureau of Developmental Disabilities Services (BDDS). The NOA specifies any adverse determination (when he/she is denied the service(s) or the provider(s) of his/her choice, or when actions are taken to deny, suspend, reduce or terminate services). The NOA informs the participant (and the participant's guardian or advocate, as appropriate) of his/her right to an appeal the determination and also advises the participant that services will be continued if he/she files the appeal in a timely manner, which is within 30 days of the decision date noted on the NOA.

Additionally, participants have the right to appeal the assessment used to determine the objective based allocation amount. Upon request, the CM assists the participant in preparing the written request for Appeal and Fair Hearing. The CM advises the participant of the required timeframes, the address for submission of the appeal, and provides an opportunity to discuss the issue being appealed. The request for an Appeal and a Fair Hearing is recorded in a Case

Note by the CM as well as recorded at the Family and Social Services Administration's Hearing and Appeals office.

Section 8.2: Group Appeals

Family and Social Services Administration, Hearings and Appeals Sections, may respond to a series of requests for hearings by providing group hearings or similar questions or changes in federal or state law or regulation. Similarly, a group of individuals who wish to appeal some aspect of policy may request to be heard as a group. If there is disagreement as to whether the issue is one of federal or state law or regulation or the facts of an appellant's personal situation, Hearings and Appeals will make the decision as to whether the appeal may be included in a group hearing.

The Administrative Law Judge may limit the discussion in a group hearing to the sole issue under appeal. When an appellant's request for a hearing involves additional issues to the one serving as the basis for the group hearing, the appeal will be handled individually. An appellant scheduled for a group hearing may choose to withdraw and be granted an individual hearing even if the grievance is limited to the sole issue involved in the group hearing.

Policies governing the conduct of individual hearings are pertinent to group hearings. Each appellant (or representative) will be given full opportunity to present the case (or have the case presented by a representative).

Section 8.3: Time Limits for Requesting Appeals

Plan of Care/Cost Comparison Budget:

- The consumer/legal guardian has the right to appeal any waiver-related decision of the state within 30 days of Notice of Action (NOA). A Notice of Action (NOA) is issued with the release of each State decision pertaining to a Plan of Care/Cost Comparison Budget (CCB). Each NOA contains the appeal rights of the consumer as well as instructions for filing an appeal.

Objective Based Allocation (OBA):

- The consumer/legal guardian has the right to appeal the OBA within 30 days of the Notice of Action (NOA). Each NOA contains the appeal rights of the consumer as well as instructions for filing an appeal.

DD Eligibility:

- The consumer/legal guardian has the right to appeal DD Eligibility within 15 days of the decision. The decision letter will contain the appeal rights of the consumer as well as instructions for filing an appeal.

Level of Care:

- The consumer/legal guardian has the right to appeal Level of Care within 30 days of the decision. The decision letter will contain the appeal rights of the consumer as well as instructions for filing an appeal.

Section 8.4: The Hearing Notice

The Family and Social Services Administration, Hearings and Appeals Section, sends a notice acknowledging the appeal to the individual by whom the appeal was filed.

The Notice of Scheduled Hearing is then sent to all parties, which includes the individual (the representative), the Service Coordinator and /or the Case Manager. The DDRS Central Office would also be included in receiving a notice if they were involved in making the decision.

The Notice of Scheduled Hearing

- Includes a statement of the date, time, place, and nature of the hearing which is always conducted in the appellant's county of residency;
- Advises the appellant of the name, address, and phone number of the person to notify in the event it is not possible for him to attend;
- Specifies that the hearing request will be dismissed if the appellant fails to appear for the hearing without good cause;
- Specifies that the appellant may request a continuance of the hearing if good cause is shown;
- Includes the appellant's rights, information, and procedures to provide the appellant, or representative with an understanding of the hearing process; and
- Explains that the appellant may examine the case record prior to the hearing

The Notice of Scheduled Hearing is sent out so that it reaches the appellant at least 10 days prior to the hearing.

Section 8.5: Request for Continuance from the Appellant

A written request for a continuance is to be directed to the Hearings and Appeals Section. Good cause must exist for a continuance to be granted. Good cause is defined as a valid reason for the appellant's inability to be present at the scheduled hearing such as inability to attend the hearing because of a serious physical or mental condition, incapacitating injury, death in the family, severe weather conditions making it impossible to travel to the hearing, unavailability of a witness and the evidence cannot be obtained otherwise, or other reasons similar to those listed in this section. If good cause exists and a continuance is granted, the hearing is rescheduled.

Section 8.6: Review of Action

When an appeal request is received, a designated state staff within the appropriate units (Service Coordinator, Case Manager, DDRS Central Office or BDDS Waiver Unit) should review the proposed action to determine whether the proposed action is appropriate.

The designated state staff must offer the individual (or representative) the possibility of an informal conference and an opportunity to review the evidence prior to the hearing. Individuals should be advised that an informal conference prior to the hearing is optional and in no way delays or replaces the administrative hearing. The conference may lead to an informal resolution of the dispute. An administrative hearing must still be held unless the individual (or representative) in writing withdraws the request for a hearing.

Section 8.7: Disposal of Appeal without a Fair Hearing

An appeal request may be disposed of without holding a fair hearing in the following situations:

- If, after review of the appellant's situation, the Service Coordinator and/or the Case Manager or the DDRS Central Office realizes that the proposed action or action taken is incorrect, then adjusting action may be taken.
- If the appellant wishes to withdraw the appeal, he/she is to be assisted by the Service Coordination and/or the Case Manager or the DDRS Central Office in promptly notifying the Hearings and Appeals Section in writing of the decision. No pressure is to be exerted on the appellant to withdraw the appeal. The withdrawal must be acknowledged in writing and it is only with the receipt of a signed voluntary withdrawal statement from the appellant that the appeal is to be dismissed.
- An appeal is abandoned when the appellant (or representative) without good cause, does not appear at a scheduled hearing. The appeal will be dismissed and the parties so notified.

Section 8.8: The Fair Hearing

An administrative hearing is a review of an action(s) of a Service Coordinator, Case Manager, DDRS Central Office or BDDS Waiver Unit regarding issues relating to the Autism, Developmental Disabilities and Support Services Waivers. An administrative Law Judge, who is an employee of the Family and Social Services Administration, Hearings and Appeals Section, is designated to hold the hearing and to issue findings of fact, conclusions of law, and a decision related to the appeal request.

A hearing allows the dissatisfied appellant an opportunity to present his/her grievance and to describe the circumstance and needs in his/her own words. An attorney or another individual of his choice may represent the individual. A designated state staff within the appropriate unit(s) (Service Coordinator, Case Manager, DDRS Central Office or BDDS Waiver Unit) will attend the hearing and present evidence supporting the action under appeal.

Section 8.9: Preparation for Hearing by Appellant

As the appellant prepares for the hearing, the appellant (or representative) is to be given an opportunity to:

- Discuss the issue being appealed with the Service Coordinator and/or Case Manager, BDDS Waiver Unit (or representative), or the DDRS Central Office representative
- Upon request, examine the entire case file and all documents and records that will be used by the Service Coordinator and/or Case Manager, BDDS Waiver Unit representative or the DDRS Central Office representative at the hearing.
- Obtain free of charge copies of all exhibits that will be used as evidence by the Service Coordinator and/or Case Manager, BDDS Waiver Unit representative or the DDRS Central Office representative at the hearing.
- The appellant is to be advised of any legal services available that can provide representation at the hearing.

Section 8.10: Preparation for Hearing by the Service Coordinator and/or Case Manager, BDDS Waiver Unit, or DDRS Central Office

The correct application of federal or state law or regulation to the appellant's situation should be reviewed by the appropriate state representative for the area in which the decision was made prior to the hearing. Thorough support of the action proposed or taken must be provided at the hearing.

The person testifying should be the person with the most direct contact with the action being proposed or taken. In the absence of the person with the most knowledge of the hearing situation, a person familiar with the action and the case record should substitute.

To prepare for the hearing, the designated state staff is to:

- Review all factors and issues that led to the action being appealed;
- Discuss the issue being appealed with the appellant (or representative) if at all possible, and definitely if a discussion is requested by the appellant. If requested, allow the appellant (or representative) to examine the entire case record;
- Identify and label all documents that are pertinent to the issue under appeal. The exhibits should be labeled in the lower right hand corner with the State's Exhibit being Exhibit A. If more than one page is in an exhibit, the pages are labeled (for the first page) State's Exhibit A, page 1 of 2; and (for page2) State's Exhibit A, page 2 of 2. The next numbers continue for each page in the exhibit being presented. The subsequent exhibit would be labeled Exhibit B and the pages according to the number of pages. Example [If three pages are in an exhibit, the third page would be labeled]:

State's Exhibit A
Page 3 of 3

- Make one copy of labeled exhibits for the Administrative Law Judge and one copy for the appellant (unless already given to the appellant). A duplicate copy of the notice sent to the appellant advising of the proposed action should be included as part of the documentation;
- Prepare a written outline that can be used as a tool in presenting the testimony at the hearing. Bear in mind when preparing the outline that the Administrative Law Judge knows nothing about the situation. The outline should focus on:
 - o Identification of the staff representative by name and position;
 - o The period of time the representative worked directly or indirectly with the appellant;
 - o One sentence explanation of the issue under appeal;
 - o The important information concerning how it was determined that the action proposed or taken was appropriate; and
 - o Federal and state laws and regulations that were the basis for the action
- Include the labeled exhibits at the appropriate point in the presentation outline

Section 8.11: Conduct of the Hearing

The Administrative Law Judge conducts the hearing. Both, the appellant and the appropriate state representative have the opportunity to:

- Present the case or have it presented by legal counsel or another person;
- Present testimony of witnesses;
- Introduce relevant documentary evidence;
- Establish all pertinent facts and circumstances;
- Present any arguments without interference;
- Question or refute any testimony or evidence presented by the other party, including the opportunity to confront and cross-examine any adverse witnesses; and
- Examine the appellant's entire case record and all documents and records used by the Service Coordinator and/or the Case Manager, the DDRS Central Office or BDDS Waiver Unit at the hearing.

These parties are advised at the close of the hearing that they will be informed in writing of the Administrative Law Judge's decision.

Section 8.12: Continuance of Hearing

If the Administrative Law Judge determines that further evidence is needed to reach a decision, the decision is delayed until such further evidence is obtained. The hearing may also be reconvened, if necessary, to obtain additional testimony. The parties will be notified of this and of the time and method for obtaining this evidence. Any evidence submitted must be copied and given to the opposite party, who then has the opportunity for rebuttal.

Section 8.13: The Hearing Record

The hearing record is an official report containing the transcript or recording of the testimony of the hearing, together with all papers and requests filed in the proceeding, and the decision of the Administrative Law Judge.

Section 8.14: The Fair Hearing Decision

A written copy of the Administrative Law Judge's hearing decision is sent to all parties. The decision includes:

- The findings of fact and conclusions of law regarding the issue under appeal; and
- Supporting laws and regulations

In all cases the decision of the Administrative Law Judge is based solely on the evidence introduced at the hearing and the appropriate federal and state laws and regulations. The Administrative Law Judge signs the decision which also contains the findings of fact and the conclusion of law. The decision is to be explained to the appellant upon request.

Section 8.15: Actions of the Administrative Law Judge's Decision

The decision of the Administrative Law Judge shall be binding upon the Division of Disability and Rehabilitative Services or the Office of Medicaid Policy and Plan and is to be enacted even if one of the parties requests an Agency Review. Such decisions do not preclude modifying changed conditions subsequent to the original appeal request as long as the change does not relate to the issue under appeal.

Section 8.16: Agency Review

Any party may request an Agency Review if dissatisfied with the decision made by the Administrative Law Judge. The Agency Review request must be made in writing to the Family and Social Services Administration, Hearings and Appeals Section, within 10 days following receipt of the hearing decision.

Once an Agency Review is requested, the Hearings and Appeals Section will write to all parties to acknowledge receipt of the request and to provide information concerning the review.

No new evidence will be considered during the Agency Review; however, any party may submit a written Memorandum of Law, citing evidence in the record, for consideration.

The Secretary of the Family and Social Services Administration or the Secretary's designee shall complete the agency review. The decision made at Agency Review will be sent to all appropriate parties.

Section 8.17: Judicial Review

The appellant, if not satisfied with the final action, may file a petition for judicial review in accordance with IC 4-21.5-5.

Section 8.18: Lawsuit

If a lawsuit is filed, all inquiries should be directed to the FSSA Office of General Counsel.